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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: CAPPADONA et al.)
Application No.: 09/425,436)
Filed: October 22, 1999)
Title: LID FOR COOKING)
PAN)
Group Art Unit: 1761)
Examiner: Drew Becker)

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington D.C. 20231, on this date.

12/6/02
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Response

In response to the final rejection mailed March 6, 2002, reconsideration and allowance of claims 20-23 are requested.

As to claim 20, it is noted that neither of the cited references discloses or suggests waterless cookware or a cooking vessel suitable for use in stove top waterless cooking applications as recited in claim 20. The Office Action states that "phrases such as "for use in stove top waterless cooking" are merely preferred methods of using the claimed apparatus and as such are not given patentable weight." Reconsideration on this point is requested for the reason that claim 20 does not merely recite waterless cooking as a preferred method of using. Claim 20 positively recites that the item claimed is "waterless cookware", and further recites that the cooking vessel is suitable for use in stove top waterless cooking applications.

Dependent claim 22 further recites, among other things, a holder that is removable from the lid for supporting the

thermometer and a retaining member on the lid that selectively retains the thermometer thereon. Both of these limitations apparently were overlooked in the Office Action. The Office Action does state that the knob assembly in Bauer acts as a holder, but the Office Action fails to address the fact that Bauer does not teach a removable holder, nor a retaining member as recited in claim 22.

As to claim 23, reconsideration is requested for the reason that the cited references do not provide any motivation to combine their teachings in the manner posited in the office action, and indeed the objective evidence, i.e., the declaration of Richard Cappadona, strongly weighs against a finding that it would have been obvious to combine these references in this manner. Bauer teaches a thermometer extending through a lid only in the context of a pressure cooker. The prior art waterless cookware teaches away from the invention. The prior art waterless cookware has sensors positioned on or above the lid. The exceptional commercial success of the claimed invention as set forth in the Cappadona declaration objectively establishes that it was not obvious to those skilled in the art to combine Bauer and Hupf et al. as in the Office Action.

The Federal Circuit Decision in *Fromson v. Advance Offset Plate, Inc.* 755 F.2d 1549, 225 USPQ 26 (Fed. Cir. 1985) is directly on point. In that case, the Federal Circuit held that the commercial success of the invention undermined arguments that the success was attributable to developments in related technology. The related technology had existed for a number of years before the invention. The rejection here essentially makes the same argument rejected in *Fromson*. The rejection posits that the claimed invention is the obvious


result of combining technologies that have existed for a number of years. In the absence of any evidence that any other inventor has combined the technologies in the manner of the applicant here, the commercial success plainly undermines the argument that the invention would have been obvious to one of ordinary skill in the art at the time the invention was made. The rejection is simply an impermissible hindsight reconstruction of the invention.

For the reasons set forth above, reconsideration and allowance of claims 20-23 are respectfully requested.

Respectfully submitted,

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Date: December 6, 2002

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